

*H*ow to Buy or Sell a Business



Management

and

Planning

Series

Building America's Future

How to Buy or Sell a Small Company
replaces **How to Buy or Sell a Small Business.**

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MAKING THE DECISION TO BUY OR SELL A BUSINESS

The Decision to Sell

The owners of closely held companies make the decision to sell for a variety of reasons:

- Retirement.
- Partnership dispute.
- Diminished interest due to boredom or frustration.
- Illness or death of a principal.
- Company growth beyond the capacity to fund with internally generated working capital or conventional debt.
- Company growth beyond the ability of existing management to effectively control.

Selling a business is different than selling any other asset because a business is more than an income-earning asset—it is a life-style as well. Therefore, the decision to sell can be emotional. Personal ambitions should be weighed against economic consequences in reaching a decision.

"Timing is everything." This old axiom is true when applied to the decision to sell a privately held company. Intelligent business owners carefully plan the decision to sell. They recognize that a company should be sold only after proper preparation and not because of sudden personal frustration or a short-term downturn in business.

The process of selling a company is very time consuming and requires sifting through potential buyers as well as many unqualified and/or uninterested buyers. Even when a qualified and interested purchaser is identified, an acceptable purchase price must be arranged and the many conditions of sale must be met.

The Decision to Buy

Buyers of privately held companies usually have one of three motives. First, some are themselves privately held companies or perhaps public companies. They are interested in market diversification, access to new technologies or new markets or economies of scale. The second group of buyers are those who evaluate the purchase solely for financial gain. The third and largest group is composed of individuals who want not only to buy a business but also to operate it.

For this group, looking at the financial ramifications is only one consideration. These individuals must carefully weigh their motives for the purchase and their selection criteria. They must consider their experience and abilities, both vocational and avocational. A current or former employer, as well as the employer's competitors, suppliers and other related companies, are good candidates for acquisition. If the buyer is interested in a company with a product or service beyond his or her area of expertise, the buyer should make certain that key employees will remain for a reasonable transition period after the change in ownership, or that employees with similar expertise can be hired. The desirability of the company's location should also be taken into account.

A decision must be made on the desired size of the company in terms of sales, profits and number of employees. It is important to determine if the desired company is profitable and stable or is a "turn-around" opportunity, currently losing money and needing new management. Obviously, the more profitable and stable, the greater the company's value.

It is especially important that the buyer identify the amount of money available for investing. If cash is not readily available, the buyer must assess the realistic possibilities for obtaining funds from other sources.

PREPARING THE COMPANY FOR SALE

Ideally, plans to sell a company should be made years in advance of the actual sale. This will permit time to adjust accounting practices and demonstrate a three- to five-year track record of maximum profitability.

Nearly every privately held company is operated in a manner that minimizes tax liability. Unfortunately, the

same operating techniques and accounting practices that minimize tax liability also minimize the value of a business. As a result, there is often a conflict between running a privately held company the way an owner wants and preparing the company for sale. Although it is often possible to reconstruct financial statements to

reflect more optimistic operating performance, this process, known as *recasting*, may also raise doubts.

Audited statements are the best financial statements because they are easily verified. However, it is more common for most small companies' financial statements to be reviewed or compiled.

Good financial statements don't eliminate the need for making the company aesthetically pleasing. The premises should be clean, the inventory current and the equipment in good working order. In addition, financial and other records should be maintained in a neat and orderly manner.

To determine pricing, a valuation report should be prepared. This report eliminates guesswork and the painful trial and error method of pricing. All too often, sellers arbitrarily decide on a price for their company and then go to the expense and effort of developing prospective buyers, only to be unable to strike a deal. It is only after repeatedly lowering the price that they learn what their business is really worth. A professionally prepared appraisal eliminates this problem. Pricing a business is discussed in more detail in a later section.

Finally, a business presentation package should be prepared by an experienced professional. This document is extremely important because, if it is poorly done,

otherwise interested buyers might get the wrong impression of the company. A buyer's preliminary interest can turn on the inclusion or omission of a single fact. All the following facets of the company should be addressed in this document:

- History of the company.
- Description of how the company operates.
- Description of the facilities.
- Discussion of suppliers.
- Review of marketing practices.
- Profile of customers/customer base.
- Description of the competition.
- Review of personnel, including an organizational chart, description of job responsibilities, rates of pay and willingness of key employees to stay on after the sale.
- Identification of the owners.
- Explanation of insurance coverages.
- Discussion of any pending legal matters or contingent liabilities.
- Compendium of three to five years' financial statements.

FINDING BUYERS AND SELLERS

The first step a seller must take after preparing the company for sale is to find a buyer. A buyer, after preparing acquisition criteria, must then search for a company to buy.

Intermediaries

Business opportunity intermediaries are usually the best source of information both on companies for sale and on buyers seeking acquisition opportunities. Intermediaries come with varying levels of skill and experience. Generally, they can be classified into three groups: (1) business brokers, (2) investment bankers and (3) merger and acquisition specialists.

The lines of distinction between these groups may blur, but in general, business brokers primarily handle small businesses, such as laundromats and dry cleaning stores. The broker need not have extensive knowledge about the business being sold or have creative techniques for financing the transaction.

Investment bankers handle the largest transactions, such as the "megabuck" takeovers or mergers of large public corporations. They have their own sources of financing, but generally do not have expertise in specific industries.

The third group, merger and acquisition specialists, handle "in-between" companies, those with sales of \$1–50 million. These specialists' services are similar to those of investment bankers except they help obtain outside financing rather than provide the financing themselves. A good merger and acquisition specialist will have a proprietary data base of potential buyers for most companies.

Most business opportunity intermediaries are compensated for their services with contingent fees that range from less than 1 percent of the purchase price on very large deals to 10 percent or more on smaller deals. Often, an intermediary working on a larger deal will receive a portion of the fee in advance, paid on either a flat or hourly basis. In exchange, the intermediary performs some tangible service, such as preparing a

presentation package and/or a valuation report for prospective buyers.

For small transactions, the fee is almost always paid by the seller. However, for larger deals, it is as common for the fee to come from the buyer as it is from the seller. Buyers typically enter into two types of agreements with intermediaries. The first type authorizes the intermediary to undertake a specific search for the buyer. In this arrangement, the intermediary is compensated with a retainer fee which is credited against a success fee if an acquisition is made. In the second type of agreement, the intermediary receives no retainer but only the success fee when an acquisition is completed, and is not obligated to perform any search work.

A good intermediary performs a number of functions, including (1) pricing the company, (2) setting the financial terms and other conditions, (3) compiling a comprehensive presentation package, (4) professionally marketing the company, (5) screening potential buyers, (6) assisting with the process of negotiating and evaluating offers and (7) maintaining confidentiality by preventing customers, suppliers and others from knowing the company is for sale. Above all, a good intermediary can save a client a great deal of time and effort, whether buying or selling a business. Only experienced intermediaries should be selected.

Print Advertising

Classified ads are a viable way to advertise small businesses for sale. Many ads are placed by intermediaries (business brokers or merger and acquisition specialists), but some are placed directly by business owners. The larger local newspapers are the best source of such ads for smaller privately held businesses. Sundays are generally the most popular days for these ads.

Larger privately held companies (so-called "middle-market companies") often are not advertised at all, but rather are confidentially marketed by intermediaries to a carefully chosen group of potential buyers. Those buyers may include companies in the industry or on the periphery of the industry as well as private investors and investment groups known to the intermediary. The larger companies that are advertised appear in the *Wall Street Journal*, most often on

Thursdays. The *Wall Street Journal* produces several regional editions so that advertisements in each edition are often regionally focused.

Middle-market companies may also appear in other publications, such as *World M&A (Mergers and Acquisitions) Network*, published in Washington, D.C., and First Maryland National Bank's *First List*, published in Baltimore, Maryland. Both are available by subscription only and published on a quarterly basis.

Business opportunity ads, whether for small or large businesses, usually describe the business in several short phrases, keeping its identity anonymous, and list a telephone number or post office box for reply. While telephone numbers draw more responses, post office boxes allow greater anonymity. The ads are worded to demonstrate the company's best qualities (both financial and nonfinancial) and many include a qualifying statement describing the kind of cash investment or experience required.

Trade Sources

Trade sources can be a viable source of information on companies for sale. Key people within an industry or in companies on the periphery of the industry, such as industry consultants, sometimes know when companies are for sale and may be aware of potential buyers. Almost every industry has a trade association and one or more trade publications. Key individuals in associations and ads in industry publications can do a good job of communicating the sale of a business. For the seller, however, there is a drawback to the use of the "industry grapevine": he or she runs the risk of revealing the company's identity.

Attorneys and Accountants

Because some attorneys and accountants enjoy a close professional relationship with clients, they are often the first ones to know of a client's interest in selling a business. Networking with attorneys and accountants can be a good way for a buyer to be among the first on the seller's doorstep when a company goes on the market. A buyer's credibility with attorneys and accountants can be improved by submitting written acquisition criteria and a description of financial capability.

EVALUATING THE COMPANY—DUE DILIGENCE

The first step for a buyer evaluating a company is to study the company's history and operation. It is also important to learn how the nature of the business may have changed since its inception. A buyer should understand the company's methods of acquiring and serving its customers and how the functions of sales, marketing, finance and operations work and interrelate. General information about the industry can be obtained from trade associations, consultants and other resources.

The company's financial statements, operating practices and other documents should be reviewed. Many items must be looked into prior to making an offer. However, others can be reviewed or verified only after a bona fide offer to purchase the company has been made and accepted—contingent on satisfactory verification of any unreviewed items.

Balance Sheet

Accounts Receivable

1. Obtain an accounts receivable aging schedule and determine if there is concentration in a few accounts.
2. Determine the reasons for any overdue accounts.
3. Find out if any amounts are in dispute.
4. Do the delinquent accounts have the ability to pay?
5. Are any of the accounts pledged as collateral?
6. Is the allowance for doubtful accounts sufficient?
7. What is the policy for granting credit?
8. Is accounting/record keeping computerized?

Inventory

1. Make sure the inventory is determined by physical count and divided by finished goods, work in progress and raw materials.
2. Establish the method of valuation: cost, market retail, LIFO (last in/first out), FIFO (first in/first out), etc.
3. Determine the age and condition of the inventory.
4. How is damaged or obsolete inventory valued?
5. Is the amount of inventory sufficient to operate efficiently?
6. Should an appraisal be obtained?

Marketable Securities

1. Obtain a list of marketable securities.
2. How are the securities valued?
3. Determine the fair market value of the securities.
4. Are any securities restricted or pledged?
5. Should the portfolio be sold or exchanged?

Real Estate

1. Obtain a schedule of real estate owned.
2. Determine the condition and age of improvements (buildings, etc.) to the real estate.
3. How was the property used before the current business was established?
4. Determine the fair market value of each of the buildings and land.
5. Should appraisals be obtained?
6. Are repairs or improvements required?
7. Are maintenance costs reasonable?
8. Do any of the principals have a financial interest in the company(s) that perform the maintenance?
9. Is the real estate required to operate the business efficiently?
10. How is the real estate financed?
11. Are the mortgages assumable?
12. Will additional real estate be required in the near future?
13. Is the real estate adequately insured?

Machinery and Equipment

1. Obtain a schedule of machinery and equipment owned and leased.
2. Determine the condition and age of the machinery and equipment.
3. Identify the machinery and equipment that is state-of-the-art and that which is obsolete.
4. Identify the machinery and equipment that is used in compliance with Environmental Protection Agency (EPA) or Occupational Safety and Health Administration (OSHA) standards and determine if additional equipment and machinery is needed to comply.
5. Should an appraisal be obtained?
6. Will immediate repairs be required?

Accounts Payable

1. Obtain a schedule of accounts payable and determine if there is concentration among a few accounts.
2. Determine the age of the amounts due.
3. Identify all amounts in dispute and determine the reason.
4. Review transactions to determine undisclosed and/or contingent liabilities.

Accrued Liabilities

1. Obtain a schedule of accrued liabilities.

2. Determine the accounting treatment of
 - Unpaid wages at the end of the period.
 - Accrued vacation pay.
 - Accrued sick leave.
 - Payroll taxes due and payable.
 - Accrued federal, state and local income taxes.
 - Other accruals.
3. Search for unrecorded accrued liabilities.

Notes Payable and Mortgages Payable

1. Obtain a schedule of notes payable and mortgages payable.
2. Identify the reason for the indebtedness.
3. Determine the terms and payment schedule.
4. Will the acquisition accelerate the note or mortgage?
5. Is there a prepayment penalty?
6. Determine if there are any balloon payments to be made and the amounts and dates due.
7. Are the notes or mortgages assumable?

Income Statement

The potential earning power of the company should be analyzed by reviewing profit and loss statements for the past three to five years. It is important to substantiate financial information by reviewing the company's federal and/or state tax returns. The company's earning power is a function of more than bottom-line profits or losses. The owner's salary and fringe benefits, noncash expenses and nonrecurring expenses should also be calculated. The four-step formula for this calculation is noted in the "Pricing the Company" section under the subheading "Income Statement Methods of Valuation."

Sales Journal

Any and all sales records, such as sales journals and sales reports, should be used to verify sales information on the income statement. Furthermore, sales journals can help determine the level of sales concentration among key customers.

Financial Ratios

While analyzing the balance sheet and income statement, sales and operating ratios should be calculated. Some of the most important ratios are the current ratio, quick ratio, accounts receivable turnover, inventory turnover and sales/accounts receivable. The significance of these ratios, the methods for calculating them and industry averages are available through Dun & Bradstreet and Robert Morris Associates. Look for trends in the ratios over the past three to five years.

Leases

1. What is the remaining term of the lease?
2. Are there any option periods, and if so, how is the option exercised?
3. Is there a percentage of sales clause?
4. What additional fees (such as a common area maintenance or merchants' association dues) are paid over and above the base rent?
5. Is the tenant or landlord responsible for maintaining the roof and the heating and air-conditioning system?
6. Is a periodic rent increase required to adjust for changes in the consumer price index or for an increase in real estate tax assessment?
7. Is there a demolition clause?
8. Under what terms and conditions will the landlord permit an assumption or extension of the existing lease?

Personnel

1. What are the job responsibilities, rates of pay and benefits of each employee?
2. What is each employee's tenure?
3. What is the level of each employee's skill in his or her position?
4. Do any employees have an employment contract?
5. Will key employees stay after the company is purchased?
6. Are any employees part of a union or is any union organizing effort likely?
7. What employee benefits does the company offer?
8. Review any employment handbooks or policy manuals.

Marketing

1. Are any of the products proprietary?
2. Describe any upcoming products and projected sales.
3. What is the company's geographic market area?
4. What is the company's percentage of market share?
5. What are the company's competitive advantages?
6. What are the company's annual marketing expenditures?
7. How are marketing strategies determined?

Patents

A list of trade names, trademarks, logos, copyrights and patents should be obtained, noting the time remaining before each expires.

Taxes

1. Are FICA, unemployment and sales tax payments current?
2. What was the date and the outcome of the last Internal Revenue Service (IRS) audit?

Legal Issues

1. Are there any suits now or ~~soon to commence~~?
2. What OSHA and EPA requirements must be met and are they currently being met? If not, what is the extent of the company's liability? An environmental audit may be appropriate.
3. Are all state registration requirements and regulations being met?
4. Are all local zoning requirements being met?
5. Review the articles of incorporation, minute books, bylaws and/or shareholder agreements.
6. What are the classes of stock issued by the corporation and the restrictions of each, if any?
7. Has any stock been cancelled or repurchased?
8. Is the business a franchise? If so, review the franchise agreement.
9. Are licenses required to operate the business transferable?

10. What is the company's returned goods policy and the extent of its liability for returned goods?
11. What is the company's liability for product warranty claims?

Competitors

1. Who are the company's competitors?
2. What is the company's market share?
3. What are each competitor's competitive advantages and disadvantages?
4. What advantages or disadvantages does the company have?

All the factors identified in this section on evaluating a company must be carefully scrutinized and weighed. Some factors will have a positive influence on the decision to buy and others a negative influence. Seek professional assistance if necessary to interpret the significance of the information. The important thing is to obtain all the information needed to make a decision.

In most instances, all business records should be made available to the buyer. In some cases, however, certain information may be withheld until a bona fide offer, contingent upon obtaining that information, has been made. If important information is unreasonably withheld, the likelihood of completing the transaction diminishes.

FINANCING THE PURCHASE

A buyer's source of financing depends in part on the size of the company being purchased. Many smaller businesses are purchased with a significant portion of the purchase price financed by the owner. The buyer, however, must provide equity in the form of a down payment and adequate working capital. Seller-financed installment sales are discussed in more detail in "Structuring the Transaction" under the subheading "Seller-Financed Transactions."

If the transaction cannot be financed by the seller, the buyer must seek financing from an outside source. To grant such financing for smaller businesses, an institutional lender is almost certain to require personal collateral for the loan; it is rare for such a loan to be secured only by the assets of the business.

The most attractive types of personal collateral from the lender's point of view are real estate, marketable securities and cash value of life insurance policies. In addition to personal collateral, it must also be demonstrated to the lender that the buyer is of good character, has a clear source of repayment and has a good

business plan. The most common sources for loans are banks and consumer finance companies.

The chances of obtaining outside financing improve as the size of the business being acquired increases. Not only does the willingness of the lender to participate increase, but the number of potential lenders increases as well. Banks, insurance companies, commercial finance companies and venture capital companies all may be interested in lending money for a sizeable acquisition. Again, the borrower must be of good character, have a clear source of repayment and have a good business plan.

Before beginning the process of procuring financing, a buyer should identify hidden sources of cash within the company. A pending lawsuit against a third party that can be resolved quickly may be a source of funds, as may an overfunded pension plan. Alternatively, the pension plan may actually be able to acquire real estate owned by the company, thus reducing the need for conventional financing.

After looking for hidden sources of cash, the next step is to apply for the loans needed to complete the acquisition of the company and provide adequate working capital.

Types of Financing

The borrowing complexity of each project is different. Sometimes only one secured loan is needed. Other transactions require more than one, or perhaps an unsecured loan. Large transactions often need many lenders and have many types or layers of debt.

Term financing is usually seen in small company acquisitions. This kind of debt is secured by a first lien on fixed assets and a first or second lien on current assets. Commercial banks are the most common underwriters of this type of debt.

Revolving debt is another type of financing typical of such transactions. Again, commercial banks usually provide such financing. They require a first lien on inventory, accounts receivable and other current assets.

Junk bond financing or mezzanine debt (unsecured debt or debt that is subordinate to term or revolving debt) is a third type of financing. It is used only in the largest leveraged buyouts. Investment bankers and investment groups typically arrange this type of debt.

Many lenders set loan conditions and restrictions on certain activities of the business. Lenders such as insurance companies and venture capitalists may insist on an equity position in the company and a role in major management decisions. Insurance companies typically only participate in transactions above \$10 million.

In instances where obtaining bank financing for the purchase of a small company on a stand-alone basis without additional collateral or co-borrowers is not possible, a Small Business Administration (SBA)

guarantee or underwriting by a state or municipal economic development agency may be available.

Financial institutions charge fees for making loans. These fees, which vary from bank to bank, reflect the time and effort required to evaluate and complete the financing. They are typically paid at settlement and range from 1 to 2½ percent, depending on the bank and the complexity of the deal. Many financial institutions require that the borrower be liable for their out-of-pocket expenses.

Applying for Financing

It is important to be well prepared and have the information that a lender needs to make a decision. Data should be submitted in the form of a loan proposal and should contain the following items:

1. Purpose of the loan.
2. Amount required.
3. Term desired.
4. Source of repayment.
5. Collateral available.
6. History and nature of the business.
7. Age, experience and education of management.
8. Key advisors.
9. Product.
10. Market area and method of distribution.
11. Major customers.
12. Suppliers.
13. Competition.
14. Facilities.
15. Employees and unions.
16. Three years of business financial statements.
17. Three years of business tax returns.
18. Current personal financial statement.
19. Business income statement, balance sheet and cash budget (for at least one year).

PRICING THE COMPANY

Determining the value of a company is the part of the buy/sell transaction most fraught with potential for differences of opinion. Buyers and sellers usually do not share the same perspective. Each has a distinct rationale and that rationale may be based on both logic and emotion.

The buyer may believe that the purchase will create synergy or economies of scale because of the way the company will be operated under new ownership. The buyer may also see the business as an especially good

life-style fit that provides a measure of "psychic income." These factors are likely to increase the amount of money a buyer is willing to pay for a company. The seller may have a greater than normal desire to sell due to financial difficulties or the death or illness of the owner or a member of the owner's family.

For the transaction to come to conclusion, both parties must be satisfied with the price and be able to understand how it was determined.

Factors that Determine Value

The topic of business valuation is so complex that any explanation short of an entire book does not do it justice. The process takes into account many variables and requires a number of assumptions. Shannon Pratt,* a noted business valuation expert, names six important factors:

1. Recent profit history.
2. General condition of the company (such as condition of facilities, completeness and accuracy of books and records, morale, etc).
3. Market demand for the particular type of business.
4. Economic conditions (especially cost and availability of capital and any economic factors that directly affect the business).
5. Ability to transfer goodwill or other intangible values to a new owner.
6. Future profit potential.

These six factors determine the fair market value. However, businesses rarely change hands at fair market value. Pratt lists three other factors that often come into play in arriving at an agreeable price:

1. Special circumstances of the particular buyer and seller.
2. Trade-off between cash and terms.
3. Relative tax consequences for the buyer and seller, which depend on how the transaction is structured.

Fair market value can be defined as the price at which property would change hands between a willing buyer and a willing seller, both adequately informed of all material facts and neither compelled to buy or to sell. In the marketplace, however, buyer and seller are nearly always acting under different levels of compulsion.

Rule-of-Thumb Formulas

The rule for using rule-of-thumb formulas for pricing a business is: Don't rely on them. The problem with rule-of-thumb formulas is that they address few of the factors that affect a company's value. They rely on a one-size-fits-all approach when, in fact, no two companies are identical.

Rule-of-thumb formulas do, however, provide a quick means of establishing whether a price for a certain business is "in the ballpark." Formulas exist for quite a few industries. They are normally calculated as a

percentage of either sales or asset values or a combination of both.

Comparables

Using comparable sales as a means of valuing a company has the same inherent flaw as rule-of-thumb formulas. Rarely, if ever, are two companies truly comparable. However, companies in the same industry do have some characteristics in common and a careful contrasting may allow a conclusion to be drawn about a range of values.

Balance Sheet Methods of Valuation

This approach calls for the assets of the company to be valued. It is most often used when the company generates earnings primarily from its assets rather than from the contributions of its employees or when the cost of starting a business and getting revenues past the break-even point doesn't greatly exceed the value of the business's assets.

There are several balance sheet methods, including book value, adjusted book value and liquidation value. Each has its proper application. The most useful is the adjusted book value method. This method calls for the adjustment of each asset's book value to equal the cost of replacing that asset in its current condition. The total of the adjusted asset values is then offset against the sum of the liabilities. The result is the adjusted book value.

Adjustments are frequently made to the book values of the following items:

- *Accounts receivable*—Often adjusted down to reflect the lack of collectability of some receivables.
- *Inventory*—Usually adjusted down since it may be difficult to sell off all of the inventory at cost.
- *Real estate*—Frequently adjusted up since it has often appreciated in value since it was acquired.
- *Furniture, fixtures and equipment*—Adjusted up if those items in service (probably more than a few years) have been depreciated below their market value or adjusted down if the items have become obsolete.

Income Statement Methods of Valuation

Although a balance sheet formula is sometimes the most accurate means to value a company, it is more common to use an income statement method. Income statement methods are most concerned with the profits or cash flow produced by the company's assets. One of the more frequently used is the discounted future cash flow

*Shannon Pratt, *Valuing Small Businesses and Professional Practices* (Homewood, Illinois: Dow-Jones Irwin, 1986).

method. This calls for future cash flows (before taxes and before debt service) of the business to be calculated using the three-step formula below.

Step 1

Historical cash flows are a good basis from which to project future cash flows. Computation of cash flows include the following:

1. The net profit or loss of the company.
2. The owner's salary (in excess of an equivalent manager's compensation).
3. Discretionary benefits paid the owner (such as automobile allowance, travel expenses, personal insurance and entertainment).
4. Interest (unless the buyer is assuming the interest payment).
5. Nonrecurring expenses (such as nonrecurring legal fees).
6. Noncash expenses (such as depreciation and amortization).
7. Equipment replacements or additions. (This figure should be deducted from the other numbers since it represents an expense the buyer will incur in generating future cash flows).

While the future cash flows may be projected for a few years, for many small companies it is meaningless to attempt projections very far into the future. Even with somewhat larger and more substantial companies, it is difficult to project cash flow for more than five years.

Step 2

Once future cash flows have been projected, they must be discounted to their present value. This is done by selecting a reasonable rate of return or capitalization rate for the buyer's investment. The selected rate of return varies substantially from one company to the next and is largely a function of risk. The lower the risk associated with an investment in a business, the lower the rate of return required. The rate of return required is usually in the 20-50 percent range and, for most businesses, it is in the 30-40 percent range. The present value of the future cash flows can be determined by using a financial calculator or a set of present value tables available from most bookstores or libraries. Table 1 demonstrates how the conversion is made with a 25 percent rate of return.

Table 1 - Calculation of Present Value of Future Cash Flows

Year	Projected cash flow	Discount factor*	Present value
Year 1	\$950,000	.800	\$760,000
Year 2	\$1,025,000	.640	\$656,000
Year 3	\$1,125,000	.512	\$576,000
Year 4	\$1,250,000	.410	\$513,000
Year 5	\$1,375,000	.328	\$451,000
			\$2,956,000**

*Based on a 25 percent rate of return. The discount factor declines in each succeeding year.

**Present value of the sum of discounted projected cash flows. This figure is added to the residual value of the business to arrive at the total value of the business.

Step 3

One more calculation must now be done—the residual value of the company. The residual value is the current value of the company's estimated net worth at the end of the period of projected cash flows (in this example, at the end of five years). This is calculated by adding the current net worth of the company and future annual additions to the net worth. The annual additions are defined as the sum of each year's after-tax earnings, assuming no dividends are paid to stockholders. These additions are added to the current net worth and that total is discounted to its present value to yield the residual value. The residual value is then added to the present value sum of the projected future cash flows previously computed to arrive at a price for the business. These calculations are shown in Table 2.

Table 2—Calculation of Net Worth Using Residual Value

Year	After-tax income
Year 1	\$550,000
Year 2	\$590,000
Year 3	\$650,000
Year 4	\$700,000
Year 5	<u>\$775,000</u>
Total additions to net worth	\$3,265,000
Current net worth	\$1,575,000
Total net worth	<u>\$4,840,000</u>

Residual value: $\$4,840,000 \times .328 = \$1,588,000^*$

*Multiplying the total net worth by the discount factor used in the final year of projected cash flows yields the residual value. Adding the residual value of \$1,588,000 to the present value sum of projected future cash flow of \$2,956,000 (from Table 1) yields a value for the business of \$4,544,000.

THE ROLE OF ADVISORS

A variety of resources are available for buyers and sellers seeking professional advice.

These resources include business owners in the industry, SBA counselors, industry consultants, professional intermediaries, business valuation experts, accountants and attorneys. Each can be of assistance and each has limitations.

Business owners, SBA counselors, consultants and intermediaries are the best source of industry information and operating suggestions. SBA, SCORE (Service Corps of Retired Executives) or ACE (Active Corps of Executives) counselors provide their services free of charge and can be reached through local SBA offices. Some SCORE counselors are qualified to advise clients regarding the purchase or sale of smaller businesses. Business owners may be able to give free advice and are often the best source of information. No one knows more about an industry than someone who is successfully running a company in that industry.

Business valuation experts can independently appraise a company's value. Bear in mind, however, that they rely on the representations of the seller. They render a conditional opinion based on the assumption that the seller's financial statements are accurate and complete.

Although this three-step formula is widely used, it cannot be applied in this simple form to arrive at a definite value conclusion. It fails to address issues such as the buyer's working capital investment, the terms of the transaction or the valuing of assets such as real estate that may not be needed to produce the projected cash flows. It is best to retain a professional with business appraisal experience to get a more precise value.

They will attempt to independently verify only certain information.

Accountants are best used to perform an audit (if one is needed), to help interpret financial statements or to provide advice in structuring the transaction to minimize tax consequences for the buyer and seller.

Probably the most frequently consulted advisor in the purchase or sale of a business is an attorney. Attorneys are asked to do everything from assessing the viability of a business and appraising its value to negotiating the purchase price and preparing the necessary documents. A good attorney advises and protects the client legally within the spirit of successfully concluding the transaction. Attorneys cannot assess the viability of a business undertaking. That is something only the buyer and seller can do. Few attorneys are qualified to value a company but they can occasionally help negotiate a price between buyer and seller. The involvement of an attorney (or any individual other than the principals) can, however, strain the lines of communication between buyer and seller, so an attorney should be used in the negotiation process only after careful consideration.

The primary function of an attorney is to prepare the purchase and sale documents as discussed by the parties.

These documents should include reasonable and balanced protections for both parties. Reputation and experience in similar transactions are important criteria when selecting an attorney. It may make sense to choose one attorney to represent both buyer and seller. This avoids the adversarial relationship that opposing attorneys often

adopt and improves the odds of successfully completing the transaction. It also eliminates some of the emotion in the negotiation process, improves the lines of communication between the parties, expedites completion of the deal and is less expensive.

STRUCTURING THE TRANSACTION

The structure of a transaction has tax and other consequences to the buyer and seller as well as an important effect on the overall value of the transaction. The type of corporation (regular C-corporation or S-corporation) owned by the seller, the size and date of the transaction and the type of consideration paid may have a bearing on the tax consequences. Since tax laws are constantly changing, it is important to seek legal and tax advice in determining the best way to structure the purchase or sale.

Asset Versus Stock Transactions

The purchase and sale of a company can be structured in one of two basic formats: (1) purchase of the assets of the selling corporation or (2) purchase of the stock of the selling corporation.

Asset Transactions

In an asset transaction, the assets to be acquired are specified in the contract. Practices vary from industry to industry but, in general, all assets of the company except cash convey to the buyer. None of the liabilities, except perhaps accounts payable, convey.

The selling corporation uses the proceeds from the sale to liquidate short-term and long-term liabilities. This means that the buyer purchases all of the company's equipment, furniture, fixtures, inventory, trademarks, tradenames, goodwill and other intangible assets.

An asset transaction is generally advantageous to the buyer. The buyer may acquire a new cost basis in the assets which allows a larger depreciation deduction. The seller must pay taxes on the difference between the basis in the assets and the price paid for the company.

The buyer may prefer an asset transaction for liability reasons. By purchasing assets, the buyer may avoid the possibility of becoming liable for any of the selling corporation's undisclosed or unknown liabilities. The most common liabilities of this type are federal and state income taxes, payroll withholding taxes and legal actions

against the company that are contemplated but as yet uninitiated.

Stock Transactions

In a stock transaction, all of the shares of stock of the selling corporation transfer to the buyer. Therefore, all of the assets and liabilities also convey. In some cases, the buyer and seller may choose to exclude certain assets or liabilities from being conveyed. The seller must pay taxes on the difference between the seller's basis in the stock and the price paid by the buyer.

Sometimes stock deals are more expedient for both parties. Stock transactions provide for continuity in relationships with suppliers. They may also preclude the necessity of obtaining a lease assignment when there is no such provision in the lease in the event of a change in the controlling interest of the corporation. The risk of inheriting undisclosed debts of the seller in a stock transaction can be minimized by providing for the buyer's indemnification and the right of offset to future payments due the seller.

In choosing to structure a deal as a stock transaction, the seller should be aware that the sale of stock in a closely held corporation falls under the umbrella of federal securities laws. This places a greater burden on the seller in a stock transaction to fully disclose all material information about the company. Failure to do so exposes the seller to the risk of securities fraud litigation.

Seller-Financed Transactions

Sales of most smaller businesses and some larger ones, particularly corporate divestitures, are partly seller financed. Typically this arrangement calls for the seller to receive some cash at settlement, but for the bulk of the purchase price to be seller financed. Such transactions are a form of leveraged buyout. For smaller privately held companies, the down payment often ranges from 10 to 50 percent of the selling price and the buyer executes a promissory note (secured by the assets of the business only) for the balance. Such notes are typically for a period

of three to ten years at an interest rate that varies with the prime rate but is most often 9-12 percent. The payments required to retire the debt service should not exceed 50 percent of the discretionary cash flow as calculated in the section on "Pricing the Company."

Leveraged Buyouts

Just as in a seller-financed sale, in a leveraged buyout the assets of the company are used to collateralize a loan to buy the business. The difference is that in a leveraged buyout, the buyer typically invests little or no money and the loan is obtained from a lending institution.

This type of purchase is best suited to asset-rich companies. A company lacking the assets needed for a completely leveraged buyout may be able to put together a partially leveraged buyout. In this structure, the seller finances part of the transaction and is secured by a second lien security interest in the assets. Because leveraged buyouts place a greater debt burden on the company than do other types of financing, buyer and seller must take a close look at the company's ability to service the debt.

Earn-Outs

An earn-out, or contingent payment sale, as it is also called, is a method of paying for a company that helps bridge the gap between the positions of the buyer and seller with respect to price. Because the payment of money to the seller under the provisions of the earn-out is predicated on the performance of the company, it is important that the seller continue to operate the company through the period of the earn-out. An earn-out is usually calculated as a percentage of sales, gross profit or net profit. It is not uncommon to establish a floor and/or ceiling for the earn-out.

Earn-outs do not preclude the payment of a portion of the purchase price in cash or installment notes. Rather, such payments are normally made in addition to other forms of payment.

Stock Exchanges

In some instances the seller may want to accept the stock of the purchasing corporation in payment for the company. Typically, the stock received (if it is the stock of a publicly held company) may not be resold for two years. If the stock may not be freely traded, its value is diminished and should be discounted to allow for this lack of marketability.

There is an advantage to the seller in this kind of transaction, however. Taxes incurred by the seller on the gain from the sale of the company are deferred until the acquired stock is eventually sold. This kind of transaction is termed a "tax-free exchange" by the IRS. Several tests must be met to qualify for this tax treatment. Check with a competent accountant or tax attorney or request a ruling from the IRS Reorganization Branch in Washington, D.C.

Employee Stock Ownership Plans

An employee stock ownership plan (ESOP) can be a viable way of structuring the purchase or sale of a company. For the owners of privately held companies, an ESOP provides an excellent way to sell the company but still control it. In this arrangement, the ESOP is established with less than 50 percent of the company's stock. For a buyer, an ESOP has some powerful financial incentives to recommend it.

Here is how a leveraged ESOP works.

1. The ESOP purchases the stock of the company using funds borrowed from a financial institution.
2. The company makes tax deductible contributions to the ESOP.
3. The ESOP uses these contributions to repay the financial institution.

The best ESOP candidates have the following characteristics:

1. A consistent profit history with earnings of at least \$300,000 (after restatement for owner compensation in excess of equivalent management). Companies in cyclical industries with fluctuating earnings are not good candidates.
2. An annual payroll of at least \$500,000.
3. Enough management depth to run the company in the event the owner does not plan to stay on after the sale.
4. A relatively debt-free balance sheet.

ESOPs provide the unique advantage of a reduced interest rate on the loan to buy the company. Under some circumstances the law allows lenders to exclude 50 percent of their interest income on such loans. An ESOP is a rare financial tool providing benefits not only for the owner but for employees as well. It gives employees access to the risks and rewards of a free enterprise economy. Experience demonstrates that sharing the risks and rewards of capital ownership with employees can improve a company's performance.

NEGOTIATION

The fine art of negotiation plays an important role in buying or selling a business. Differences of opinion are inherent in the negotiation process and only realistic negotiators can find creative solutions to such differences. Because it is nearly impossible for the principals in a transaction to see the issues through the perspective of their counterpart, it is helpful to have a third party negotiate for them. Business brokers or merger and acquisition intermediaries are well suited for this task since they are usually familiar with the issues and options typical of such transactions.

Businesses change hands most easily when the parties assume a nonadversarial posture. It is imperative that both parties understand the issues important to the other. Price is just one aspect of the transaction to be negotiated; terms are just as important, particularly the period of time over which the debt is to be repaid and the allocation of the purchase price for tax purposes.

Sellers usually have the upper hand in negotiations since they know the company best. A buyer can minimize the seller's advantage by learning as much as possible about

the company. The section on "Evaluating the Company" identifies the key areas to be studied. It is important to do more than study the company to prepare for negotiations. The parties must understand each other's motivation for wanting to buy or sell the company and each other's plans after the transition. Each must also understand why the other has taken a certain position on a particular issue.

Developing a negotiating strategy means that each party must know the other's position and must develop his or her own position as well. The parties should prepare a list of reasons for their positions. They should also think through possible weaknesses in their reasoning. In this way, each can anticipate and respond to the objections of the other party.

The buyer should request that the seller not negotiate with other buyers while the specifics of the offer are being considered. It is to the seller's advantage, on the other hand, to negotiate with more than one buyer at a time. In negotiations it is most important to be able to see matters from the other party's perspective. This eliminates much of the difficulty of reaching agreement and saves time.

MAKING AND EVALUATING OFFERS

Making an Offer

Before making an offer, a buyer will typically investigate a number of companies. At some point in the investigation process, it may be necessary to sign a confidentiality agreement and show the seller a personal financial statement. A confidentiality agreement pledges that the buyer will not divulge any information about the business to anyone other than immediate advisors.

A buyer should determine a range of value for the company. An appraisal of the value of the hard assets of the company can be used to establish a pricing floor. A pricing ceiling can be established by using an appraisal that capitalizes projected future cash flows under new management. An example of this is demonstrated in the section on "Pricing the Company."

A buyer should have access to all records needed to prepare an offer. If some information is lacking, the buyer must decide to either walk away from the transaction or make an offer contingent upon receiving and approving the withheld information. The nature and amount of withheld information determines which course of action to take.

An offer may take the form of a purchase and sale agreement or a letter of intent. Although they have different names, the two documents serve the same purpose. They are a means of documenting a buyer's expression of interest. They are usually binding on the parties although they often contain conditions that allow one or both parties to be released from the agreement. These may be the buyer's failure to obtain financing or the discovery of previously undisclosed adverse information.

Regardless of which form of the agreement is used, it should contain the following:

1. Total price to be offered.
2. Components of the price (amount of security deposit and down payment, amount of bank debt, amount of seller-financed debt, etc.).
3. A list of all liabilities and assets being purchased. The minimum amount of accounts receivable to be collected and the maximum amount of accounts payable to be assumed may be specified.
4. The operating condition of equipment at settlement.
5. The right to offset the purchase price in the amount of any undisclosed liabilities that come due after

- settlement and in the amount of any variance in inventory from that stated in the agreement.
- 6. A provision that the company will be able to pass all necessary inspections.
- 7. A provision calling for compliance with the bulk transfer provisions of the Uniform Commercial Code. (This does not apply to sales of the corporation's stock.)
- 8. Warranties and representations of clear and marketable title, validity and assumability of existing contracts, if any; tax liability limitations; legal liability limitations and other appropriate warranties.
- 9. A provision (where appropriate) to make the sale conditional on lease assignment, verification of financial statements, transfer of licenses, obtaining financing or other provisions.
- 10. A provision for any appropriate prorations such as rent, utilities, wages and for prepaid expenses such as insurance, utility deposits and license fees.
- 11. A noncompetition covenant. This document is sometimes part of and sometimes a separate exhibit to the purchase and sales agreement.
- 12. Allocation of the purchase price.
- 13. Restrictions on how the company is to be operated until settlement.
- 14. A date for settlement.

The purchase and sales agreement is a complex document and it is imperative to get professional help in drafting it.

Evaluating an Offer

The seller should look for all the same provisions in an offer that were just enumerated in the section on "Making the Offer." The types of offers a seller is likely to receive depend in some measure on the size of the company. A seller should ask for a résumé and financial statement from an individual buyer. If the buyer is another company, the seller should request the company's financial statements.

Sometimes a commitment to the work ethic is the only nonfinancial attribute needed of a small business buyer. In other cases, successful related work experience may be important. If the buyer is another company, look for the logic behind the acquisition. Perhaps some kind of synergy or an economy of scale is created. A buyer should prepare and show the seller a postacquisition business plan.

One final note—carefully study offers to determine what assets and liabilities are being purchased. An offer for the assets of a business may be worth considerably less than an offer for its stock even though the price offered for the assets is higher.

CLOSING THE TRANSACTION

Business settlements, or closings, as they are also called, are the final legal procedure by which a company changes hands. It is important to have good problem-solving attorneys representing all parties. A good settlement attorney can help find creative ways to resolve differences of opinion.

One of the many details of settlement is that of meeting the requirements of the Bulk Sales Act in the event the assets (not the stock) of the company are being sold. This law calls for the company's suppliers to be notified of the impending sale. The suppliers must respond within the allowed time if money is owed by the seller. Another function performed as part of settlement is a search, to determine whether any liens against the company's assets have been filed in the records of the local courthouse.

Meeting Conditions of Sale

After buyer and seller have entered into a binding contract, there may be several conditions to be met before the sale can be closed. Such conditions often address

issues such as assignment of the lease, verification of financial statements, transfer of licenses or obtaining financing. There is usually a date set for meeting the conditions of sale. If a condition is not met within the specified time, the agreement is invalidated.

Documents

A number of documents are required to close a transaction. The purchase and sale agreement is the basic document from which all the documents used to close the transaction are created. This agreement is discussed in detail in "Making the Offer." The documents most often used in closing a transaction are described below. Other documents not described below may also be needed, depending on the particulars of the transaction.

The settlement sheet—Shows, as of the date of settlement, the various costs and adjustments to be paid by or credited to each party.

Escrow agreement—Used only for escrow settlements. It is a set of instructions signed by the buyer and seller in advance of settlement stating the conditions of escrow; the responsibilities of the escrow agent and the requirements to be met for the release of escrowed funds and documents.

Bill of sale—Describes the physical assets being transferred and identifies the amount of consideration paid for those assets.

Promissory note—Used only in an installment sale, this note shows the principal amount and terms of repayment of the buyer's debt. It specifies remedies for the seller in the event of default by the buyer. It is signed by the buyer, and the buyer often must personally guarantee the debt.

Security agreement—Creates the security interest in the assets pledged by the buyer to secure the promissory note and underlying debt. It also states the terms under which the buyer agrees to use those assets that constitute collateral. It is used only in an installment sale.

Financing statement—Creates a public record of the security interest in the collateral and therefore notifies third parties that certain assets are encumbered by a lien to secure the existing debt. The cost to record the financing statement varies by jurisdiction. It is used only in installment sales.

Covenant not to compete—Protects the buyer and the buyer's investment from immediate competition by the seller in his or her market area for a limited time. The scope of this document must be reasonable in order for it to be legally enforceable. The covenant not to compete is

sometimes included as a part of the purchase and sales agreement and is sometimes written as a separate document. It is not required in every transaction.

Employment agreement—Specifies the nature of services to be performed by the seller after the sale, the amount of compensation to the seller, the number of times per week or per month the services are to be performed, the duration of the agreement and often a method for discontinuing the agreement before its completion. Employment agreements are not required in all transactions, but they are used with great frequency. It is not uncommon that the seller remain involved with the company for periods of as little as a week or as much as several years. The length of time depends on the complexity of the company, the depth of management and the experience of the buyer. For small businesses, the seller will usually provide some services for a period of several weeks. With larger companies, the seller is usually required to stay on for an extended period of time and is compensated for his or her services.

Contingent Liabilities

Contingent liabilities must be taken into account and provided for when a company is sold. They most often occur because of pending tax payments, unresolved lawsuits or anticipated but uncertain costs of meeting regulatory requirements. Contingent liabilities can be handled by escrowing a portion of the funds earmarked for disbursement to the seller. The sum escrowed can be used to pay the liability as it comes due and any remaining money can be disbursed to the seller.

APPENDIX: INFORMATION RESOURCES

U.S. Small Business Administration (SBA)

The SBA offers an extensive selection of information on most business management topics, from how to start a business to exporting your products.

This information is listed in *The Small Business Directory*. For a free copy write to: SBA Publications, P.O. Box 1000, Fort Worth, TX 76119.

SBA has offices throughout the country. Consult the U.S. Government section in your telephone directory for the office nearest you. SBA offers a number of programs and services, including training and educational programs, counseling services, financial programs and contract assistance. Ask about

- **Service Corps of Retired Executives (SCORE)**, a national organization sponsored by SBA of over 13,000 volunteer business executives who provide free counseling, workshops and seminars to prospective and existing small business people.
- **Small Business Development Centers (SBDCs)**, sponsored by the SBA in partnership with state and local governments, the educational community and the private sector. They provide assistance, counseling and training to prospective and existing business people.
- **Small Business Institutes (SBIs)**, organized through SBA on more than 500 college campuses nationwide. The institutes provide counseling by students and faculty to small business clients.

For more information about SBA business development programs and services call the SBA Small Business Answer Desk at 1-800-U-ASK-SBA (827-5722).

Other U.S. Government Resources

Many publications on business management and other related topics are available from the Government Printing Office (GPO). GPO bookstores are located in 24 major cities and are listed in the Yellow Pages under the "bookstore" heading. You can request a *Subject Bibliography* by writing to Government Printing Office, Superintendent of Documents, Washington, DC 20402-9328.

Many federal agencies offer publications of interest to small businesses. There is a nominal fee for some, but most are free. Below is a selected list of government agencies that provide publications and other services targeted to small businesses. To get their publications, contact the regional offices listed in the telephone directory or write to the addresses below:

Consumer Information Center (CIC)

P.O. Box 100
Pueblo, CO 81002

The CIC offers a consumer information catalog of federal publications.

Consumer Product Safety Commission (CPSC) Publications Request

Washington, DC 20207

The CPSC offers guidelines for product safety requirements.

U.S. Department of Agriculture (USDA)

12th Street and Independence Avenue, SW
Washington, DC 20250

The USDA offers publications on selling to the USDA. Publications and programs on entrepreneurship are also available through county extension offices nationwide.

U.S. Department of Commerce (DOC)

Office of Business Liaison

14th Street and Constitution Avenue, NW
Room 5898C

Washington, DC 20230

DOC's Business Assistance Center provides listings of business opportunities available in the federal government. This service also will refer businesses to different programs and services in the DOC and other federal agencies.

U.S. Department of Health and Human Services (HHS) Public Health Service

Alcohol, Drug Abuse and Mental Health Administration

5600 Fishers Lane
Rockville, MD 20857

Drug Free Workplace Helpline: 1-800-843-4971. Provides information on Employee Assistance Programs.

National Institute for Drug Abuse Hotline:

1-800-662-4357. Provides information on preventing substance abuse in the workplace.

The National Clearinghouse for Alcohol and Drug Information: 1-800-729-6686 toll-free. Provides pamphlets and resource materials on substance abuse.

U.S. Department of Labor (DOL)
Employment Standards Administration
200 Constitution Avenue, NW
Washington, DC 20210
The DOL offers publications on compliance with labor laws.

U.S. Department of Treasury
Internal Revenue Service (IRS)
P.O. Box 25866
Richmond, VA 23260
1-800-424-3676
The IRS offers information on tax requirements for small businesses.

U.S. Environmental Protection Agency (EPA)
Small Business Ombudsman
401 M Street, SW (A-149C)
Washington, DC 20460
1-800-368-5888 except DC and VA
703-557-1938 in DC and VA
The EPA offers more than 100 publications designed to help small businesses understand how they can comply with EPA regulations.

U.S. Food and Drug Administration (FDA)
FDA Center for Food Safety and Applied Nutrition
200 Charles Street, SW
Washington, DC 20402
The FDA offers information on packaging and labeling requirements for food and food-related products.

For More Information

A librarian can help you locate the specific information you need in reference books. Most libraries have a variety of directories, indexes and encyclopedias that cover many business topics. They also have other resources, such as

- **Trade association information**
Ask the librarian to show you a directory of trade associations. Associations provide a valuable network of resources to their members through publications and services such as newsletters, conferences and seminars.
- **Books**
Many guidebooks, textbooks and manuals on small business are published annually. To find the names of books not in your local library check *Books In Print*, a directory of books currently available from publishers.
- **Magazine and newspaper articles**
Business and professional magazines provide information that is more current than that found in books and textbooks. There are a number of indexes to help you find specific articles in periodicals.

In addition to books and magazines, many libraries offer free workshops, lend skill-building tapes and have catalogues and brochures describing continuing education opportunities.